



INSTRUCTION CPL 2-2.30

DATE: May 13, 1982
SUBJECT: Authorization of Review of Specific Medical Information
TO: TOSHA Personnel

FROM: Director *JB*
Chief, Standards & Procedures *RBE*
THRU:

- A. PURPOSE: To authorize appropriately qualified TOSHA personnel to conduct reviews of the medical records specified in paragraph E. of this instruction where there is a need to gain access for enforcement purposes.
- B. DOCUMENTS REFERENCED:
1. This instruction implements paragraph F.6. of TOSHA Instruction CPL 2.22; dated March 1, 1982; Subject: Access to Employee Medical Records.
 2. This instruction adopts the provisions of OSHA Instruction CPL 2-2.32; dated January 19, 1981; Subject: 29 CFR 1910.13(b)(6), Authorization of Review of Specific Medical Information.
- C. STANDARD AFFECTED 29 CFR 1910.20 Access to Employee Exposure and Medical Records.
- D. BACKGROUND:
1. For compliance purposes, and solely in order to verify employer compliance with recordkeeping requirements, TOSHA compliance personnel are permitted access to that employee medical information which is part of a medical surveillance program mandated by specific occupational health standards; i.e., in order to determine that the medical information exists. (See the affected standard and TOSHA Instruction CPL 2.22, paragraphs F.4. and I.4.) In doing so:
 - a. TOSHA compliance personnel should verify employer compliance with medical recordkeeping requirements by interviewing employer and employee representatives, employees, and, where appropriate, physicians
 - b. In addition, compliance officers may want to verify compliance by determining that appropriate medical records exist as required. Where medical records are used to verify compliance:

Documentation of non-compliance will consist only of the employee's name and the violation, and not the specific medical information.

Documentation of compliance will consist of a statement attesting to a check of some of the records and compliance with the specific recordkeeping requirements.

- (3) No analysis is to be made of the medical content of the file. If copying or review of the content of the records is necessary, the Area Supervisor must follow the procedures set forth in TOSHA Instruction CPL 2.22 (e.g., in coordination with the Chief of Health Standards Enforcement, appoint a Principal TOSHA Investigator).

2. TOSHA compliance personnel also are permitted access (for compliance purposes) to biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., blood lead levels). These results are treated by 29 CFR 1910.20(c)(5) as exposure records.
3. Procedures for access to medical opinions mandated by specific standards are described in TOSHA Instruction CPL 2-2.29.
4. There may, however, be compliance needs for reviewing the content of - and if appropriate, copying - employee medical records that pertain to diagnostic tests which measure or reflect the adverse effects of exposure to toxic substances or harmful physical agents. 29 CFR 1910.20(c)(6) treats these as medical records.

E SPECIFIC MEDICAL INFORMATION: This instruction authorizes the examination of the content of and, if appropriate, the copying of employee medical records pertaining to the following:

1. Pulmonary function tests.
2. Audiograms
3. Blood Urea Nitrogen (BUN)
4. Serum creatinine.
5. Complete blood count with differential and description of peripheral smear.
6. Serum electrolytes
7. Serum calcium
8. Serum phosphorus
9. Lactic dehydrogenase (LDH).
10. Creatine phosphokinase (CPK)
 1. Serum glutamic-oxaloacetic transaminase (SGOT).
12. Serum glutamic-pyruvic transaminase (SGPT)
13. Urinalysis, including test for hematuria, glucosuria, proteinuria, ketonuria, and microscopic examination of urine.
14. Zinc protoporphyrin test (ZPP).

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15. Erythrocyte and plasma cholinesterase assays.

Metabolites found in urine when a specific exposure is identified or postulated.

17. Metabolites found in blood when a specific exposure is identified or postulated.

Radiologists' interpretations of employee X-rays.

Erythrocyte sedimentation rate.

20. Platelet count

21. Serum bilirubin

22. Urine and sputum cytology reports

23. Serum triglycerides

24. Serum cholesterol.

F QUALIFIED COMPLIANCE PERSONNEL: Review of the results of any medical tests named in paragraph E. of this instruction which are in personally identifiable form shall be limited to TOSHA field-qualified industrial hygienists or professionals with specific training or experience in medical disciplines (normally industrial hygienists in grades IH-2 or higher).

G. APPLICATION AND STATUTORY PURPOSE:

1. TOSHA Instruction CPL 2.22, paragraph F.6., excluded from the provisions of the directive situations "where a written directive by the Director, . . . , authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard . . . or of specific biological monitoring test results."
2. This instruction authorizes appropriately qualified TOSHA field personnel to conduct reviews of the tests named in paragraph E. of this instruction where the Area Supervisor determines that there is a need to gain access for enforcement purposes.
 - a. This authorization applies where the tests are part of medical surveillance programs mandated by standards; or where a laboratory test is not mandated by a standard but is:
 - (1) A recognized indicator of a worker's past and/or potential exposure to a toxic substance or harmful physical agent which is known to be present or is likely to be present (e.g., hippuric acid found in the urine due to exposure to toluene); or
 - 2) A recognized indicator of an adverse health effect of that substance or agent (e.g., pulmonary function testing of workers' exposure to silica).

b. For the purposes of this instruction, "employee medical record" means any record concerning a current or former employee's health as it pertains to the laboratory tests specified in paragraph E. of this instruction, and which is made or maintained by a physician, nurse, technician, or other health care personnel. This includes:

- (1) The results of the laboratory test; and
- (2) Control, certification, and standartization data used for the laboratory determinations and findings.

3. Statutory Purpose. The purpose of obtaining access to this medical information is to assure safe and healthful working conditions for working men and women by providing an effective enforcement program for TOSHA standards and the Tennessee Occupational Safety and Health Act. See T.C.A. § 50-502.

H. COMPLIANCE PROCEDURES.

1. Before obtaining access to the medical information described in paragraph E. of this instruction, it must be determined by the Area Supervisor and/or Chief of Health Standards Enforcement that there is a genuine and supportable need to gain access for TOSHA enforcement purposes.

a. Review of the medical information named in paragraph E. of this instruction could be relevant to the type of enforcement action TOSHA may initiate against an employer, or could serve as evidence of the appropriateness of an enforcement action. The following considerations are among those which could indicate the need to gain access to such personally identifiable employee medical information:

To document employer knowledge by establishing that the records show a pattern of disease.

- 2) To provide evidence that the employer willfully violated a TOSHA standard.
- (3) To provide supporting evidence that a "general duty clause" (T.C.A. § 50-505(a)) violation occurred.

To document inadequate management of employees found to have evidence of adverse health effects. For example, to document that workers were not adequately notified of abnormal laboratory values or that appropriate followup protective measures were not taken.

To verify compliance during followup inspections

b A determination must also be made that

An employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (e.g., inhalation, ingestion, skin contact or absorption, etc.) This determination of the employee's exposure includes both past or potential exposure.

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- (2) The laboratory test is a recognized indicator of an employee's past and/or potential exposure to a toxic substance or harmful physical agent, or a recognized indicator of an adverse health effect of such an exposure. This can be derived from a variety of sources, including recognized textbooks in the fields of industrial hygiene, medicine, and toxicology; Federal publications; and technical journals.
 - c. This instruction does not authorize the compliance officer to examine records for the purpose of identifying trends of illnesses which are not directly related to the recognized effects of specific toxic substances or harmful physical agents. Thus, the compliance officer is not to do investigative research or conduct a wholesale investigation of medical records to identify possible violations.
 2. Access to medical information named in paragraph E. of this instruction shall, if practicable, involve on-site review. A minimum of personally identifiable information shall be recorded for enforcement purposes and taken off-site.
 3. Compliance personnel shall use, if available, the normal ranges for the laboratory conducting the test, or normal values established in accepted medical texts.
 4. When an abnormality is identified, the compliance officer shall investigate the abnormality through one (1) or more of the following mechanisms:
 - a. Consult with the examining physician or health care personnel in charge of or who has access to employee medical records. If, based on this consultation, the compliance officer determines that no further investigation is necessary, documentation shall be made in the case file of:
 - Whose records and which tests were examined;
 - The rationale for examining those tests;
 - All abnormalities found (without personally identifiable information); and
 - What procedures were followed.
 - b. If the procedure described in subparagraph H.4.a. above was not followed, or it was followed but no satisfactory response was given, the Area Supervisor shall contact the Chief of Health Standards Enforcement who, in turn, shall obtain the services of a medical consultant. (See T.C.A. § 50-565(1)).
- NOTE: Personally identifiable information shall be removed from all other field notes concerning these test results once a decision has been made that no further action is necessary.

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5. Notifying Employees of Abnormal Results

- a. When abnormalities have been satisfactorily explained by the employer's physician, the compliance officer shall investigate whether the physician notified the employee of the results.
- b. When the services of a contract physician have been used, the compliance officer shall ensure that the contract physician (under contract with TOSHA) notifies the employee of any abnormalities found.

6. TOSHA compliance officers have the responsibility to maintain the confidentiality of all medical information and records.

- a. The compliance officer shall not discuss any of the information found in the records, which is or could be identified with specific individuals, with any employer or employee representatives, except the physician or health care personnel in charge of or who has access to employee medical records. This restriction applies even in situations where such medical information may be known to those (or other) individuals.
- b. However, the compliance officer is authorized to reveal the following information to an employee whose medical record has been reviewed:
 - (1) The laboratory test examined;
 - (2) The rationale for examining the test;
 - (3) The normal ranges used and where these ranges were derived; and
 - (4) The numerical test result if known by the compliance officer

NOTE

- (a) Under no circumstances should the compliance officer attempt any further discussion with the employee of the meaning of the results, conclusions, interpretations, diagnoses, etc. These judgments can only be made in view of the total medical record and only by an examining physician. If the employee wants clarification, he/she shall be referred to a physician for any discussion of test results.
- (b) The compliance officer shall not re-examine the medical records solely to inform an employee of his/her test results.

Access to this medical information for purposes other than for the limited enforcement needs set forth in paragraph H. of this instruction will require a written access order pursuant to TOSHA Instruction CPL 2.22, paragraph H., unless:

- a. Specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the Division of Occupational Safety and Health (TOSHA) or an employee thereof is listed on the authorization as the designated representative to receive the medical information.

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- b. A TOSHA contract physician consults with an employer's physician pursuant to TOSHA Instruction CPL 2.22, paragraph H.4.b.

I SECURITY PROCEDURES: Whenever personally identifiable employee medical information is obtained pursuant to this instruction and taken off-site, the Area Supervisor shall:

1. Promptly consult with the Chief, Health Standards Enforcement (TOSHA Medical Records Officer) to name a Principal TOSHA Investigator to assure protection of the information.
2. Assure that the personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs L. through Q. of TOSHA Instruction CPL 2.22.

J. CITATIONS:

1. If abnormalities have been detected and the employee has not been notified, the Area Supervisor and/or Compliance Officer should consult with the Chief of Health Standards Enforcement before issuing a citation.
2. Documentation to support a citation (see paragraph H.1.a. of this instruction) shall include personally identifiable information. However, this information shall not be disclosed on the citation.

K ACTION:

- 1 The Chief, Health Standards Enforcement, and Area Supervisors shall assure that:
 - a. The authorization to review specific medical information is administered and implemented according to the provisions of paragraphs E., F., G., H., I., and J. of this instruction.
 - b. The personally identifiable employee medical information to be examined or copied is limited to only that information needed for enforcement purposes, and is handled with appropriate discretion and care.
- 2 Personnel shall annotate the referenced document (see paragraph B.1. of this instruction) and the affected standard in accordance with TOSHA Instruction ADM 5.2.

EFFECTIVE DATE: This instruction is effective upon receipt and shall remain in effect until cancelled or superseded.